In the High Court of Punjab and Haryana at Chandigarh

…

C.E.A.No.157 of 2005

Date of decision:4.12. 2006

Commissioner of Central Excise, Chandigarh.. .. Appellant

Versus

Central Excise & Service Tax Appellate Tribunal, New Delhi and another.

..Respondents

Coram: **Hon'ble Mr.Justice Adarsh Kumar Goel**
Hon'ble Mr.Justice Rajesh Bindal

Present: Mr.Kamal Sehgal,Advocate
for the Appellant.
Mr.Vishwanath Shukla,Avocate
for respondent No.2.

..

ORDER:

This appeal has been preferred under Section 35-G of the Central Excise Act,1944 (for short, "the Act") by revenue against the order dated 9.3.2005 in Appeal No. E/4183/04-NB(A) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, proposing following substantial questions of law:-

> "Whether under Rule 7 of the Central Excise Rules,2002, Jurisdictional Assistant Commissioner/Deputy Commissioner is empowered to determine the provisional value or not."

Briefly the issue involved in the present case is as to whether the turn over discount granted by the assessee after the close of the year is to be reduced from the assessable value for the purpose of levy of duty. The claim made by the assessee was that the deduction on that account should be granted at the time of clearance of the goods. However, the adjudicating authority rejected the claim holding that as the admissibility of the turn over discount is determined by the assessee at the end of the year, the same shall be considered as and when the contingency arises. In appeal, the claim of the assessee was

upheld by the Commissioner (Appeals). The revenue failed in its appeal before the Tribunal against the order passed by the Commissioner (Appeals).

Learned counsel for the assessee raises a preliminary objection as regards the maintainability of the appeal before this Court relying upon Section 35-G of the Act. He submitted that as the issue relates to valuation of goods for the purpose of leviable duty, the jurisdiction of this Court to deal with the same is specifically excluded under Section 35-G of the Act .

Learned counsel for the revenue though tried to bring the case out of the exceptions carved out in Section 35-G of the Act but failed. He submitted that the question was merely as to when the benefit of turn over discount is to be granted to the assessee.

We do not find any merit in this submission. While accepting the preliminary objection raised by the counsel for the assessee, we dismiss the present appeal as not maintainable before this Court.

(Adarsh Kumar Goel)
Judge

December 4,2006
nk

(Rajesh Bindal)
Judge